

Council, 14 May 2015

Review of Registration Appeals

Introduction

The attached papers serve a dual purpose: first, to report on the handling of registration appeals over the three year period January 2012 – December 2014 in order to bring the Council up to date on this area of the work; and, second, to outline how the Executive intent to transfer the day-to-day management of registration appeals from Fitness to Practise Department to the Registration Department.

Decision

This paper is for discussion.

Background information

At its meeting in December 2014 the Council noted - in the context of its consideration of a paper setting out the findings of an audit of final fitness to practise hearing decisions - that any similar paper in relation to registration appeals should be produced only on a risk basis. The Council noted too, however, that the number of registration appeals was at that time at a high level and that the Executive was looking at how the length of time taken to process these cases could be shortened.

Resource implications

Registration Department will create a new Registration Appeal sub-team within the Registration Operations team.

Four Registration Department team members will be responsible for registration Appeals, one Registration Appeal Manager and 3 Registration Appeal Coordinators. It is expected that two posts will be absorbed into the Registration Department's budget by not filling some current roles. Two posts will be funded by a transfer of the FTE budget allocation from the Fitness to Practise Department to the Registration Department.

A newly developed process will need to be developed and learnt by the Registration Department's newly formed Registration Appeal team. Financial implications

There should be no additional costs incurred as a result of implementing the approach outlined in this paper. New job roles will be funded by a combination of

not filling some current vacant roles with the Registration Department and transfer of FTE post costs from the Fitness to Practise Department budget to the Registration Department budget.

Any unforeseen minimal costs will be covered within the existing Fitness to Practise and Registration budgets.

Appendices

- Review of Registration Appeal cases: January 2012 – December 2014
- The Future of Registration Appeals

Date of paper

22 April 2015

Review of Registration Appeal cases: January 2012 – December 2014

1. Introduction

1.1 Article 37 of the Health and Social Work Professions Order 2001 makes provision for individuals to appeal against adverse decisions of the Education and Training Committee (ETC) relating to registration. The circumstances in which individuals may exercise a right of appeal are broad:

- refusal of an application for registration, readmission or renewal or for inclusion of an additional register entry;
- refusal to register a visiting professional from relevant European states;
- imposition of additional conditions which must be satisfied before registration;
- removal from the register because of non-compliance with CPD requirements;
- failure by the ETC to issue a decision.

1.2 Most appeals (68% of those received in the three year period) are from EEA/international applicants. The great majority of the remainder (30% of the total) relate to refusals following consideration by a Registration Panel of a health or character declaration.

1.3 The legal process for dealing with appeals is set out in the Health and Care Professions Council (Registration Appeals) Rules 2003. The administration of the appeal process has to date been managed by the Fitness to Practise Department, where this work is concentrated on two of the seven Case Teams (CT3 and CT7 – the same teams that process health and character declarations.)

1.4 This paper summarises the management of Registration Appeal cases over the three year period from January 2012 until December 2014. In that period 208 appeals were received.

Process

- 1.2 The legislation provides that an individual has 28 days from the date of the ETC's decision in which to lodge an appeal. This timeframe is treated with some degree of flexibility and managers in the Fitness to Practise Department are authorised to exercise an administrative discretion in favour of the appellant where s/he can show good reason why the 28 day window has been missed. Most often this is because there has been a delay in notifying the individual of the ETC's decision or the individual is based outside the UK and there has been a delay in their receiving the decision.
- 1.3 In brief, the process is that once the appeal has been accepted as valid it is assigned to a Case Manager, who will acknowledge it and, where these have not already been submitted with the appeal notice, request from the appellant the detailed grounds of appeal. Where necessary, the Case Manager will also obtain any relevant documentation held by the Registration Department.
- 1.4 Once the grounds of appeal and all other relevant documentation have been obtained the case is considered at the next monthly case conference, attended by staff from both the Registration and Fitness to Practise Departments and the Council's solicitor. The case conference decides whether the case is ready to proceed to hearing and if so, a solicitor is instructed to present it. The Fitness to Practise Department's Scheduling Team will then look to list the case for the first available hearing date.
- 1.5 A bundle of documents is prepared and sent to the appellant and also to the panel, legal assessor and the advocate in advance of the hearing date.
- 1.6 Hearings are usually listed on one or two days a month. Several cases are listed for hearing each day. How many will depend on whether appellants have requested an oral hearing or have indicated they are content for the appeal to be heard on the papers alone.
- 1.7 The process was reviewed towards the end of 2013/14 and some key enhancements made. These included:
 - an explicit timescale for all new appeals to be acknowledged within 5 working days;
 - a requirement to send a monthly update letter to appellants whose appeals were received more than two months ago but are not yet listed for hearing;

- extension of the monthly case conference to consider all appeals rather than only international and ‘grandparenting’ cases;
- introduction of a ‘countdown’ system for the preparation of bundles to ensure these are prepared, checked and sent to the parties in good time before the hearing; and
- introduction of a pre-hearing checks meeting one week before the hearing to confirm arrangements and review the documentation, including any late submissions from the appellant or their representative.

2. Statistical analysis

2.1 Of the 208 appeals received in the three year period under review, 96 (46%) were from individuals applying as physiotherapists (48) or practitioner psychologists (also 48). The next most common profession, albeit only from August 2012, was social workers, from whom 28 appeals were received (13% of the total).

2.2 In the same three year period 133 appeals were heard. Of these 51 (38%) were allowed and 68 (51%) dismissed. Of the remainder: nine were remitted to the ETC to reconsider; in two cases the appeal panel substituted the ETC’s decision with a different decision; two were adjourned; and one appeal was withdrawn.

2.3 The number of open appeal cases has been managed down from 57 in December 2014 – it had peaked at 63 in October 2014 - to 45 at the end of March 2015.

3. Quality assurance

3.1 In common with other case types Registration Appeal cases are sample audited by the Fitness to Practise Department’s Quality Compliance Team (QCT) each month.

3.2 In the period April – December 2014 27 cases were audited, representing 43% of the number of new appeals received in that time. The audit findings were:

- twenty two cases (81%) had no issues, four had a single minor issue such as a discrepancy with the setting of “chase” actions in the Case Management System (CMS) and three had more than a single minor issue;

- four cases had overdue actions within the CMS;
- two cases required changes to CMS to ensure it matched the case status on the Register;
- no cases were considered to require immediate remedial action, though two were referred to the relevant Case Team Manager for consideration;
- a number of data completeness issues were highlighted with individual feedback given and generic messages included in training and guidance revisions.

4. Learning from upheld appeals

4.1 As part of the response to the 2014/15 Professional Standards Authority Performance Review some analysis was undertaken of ten upheld appeals in order to determine whether the change in outcome resulted from the receipt of new information or reflected an error in the original decision.

4.2 Three cases stemmed from decisions that the individuals did not meet the relevant Standards of Proficiency. In each case the individual was able to demonstrate to the appeal panel that they had undertaken additional study or training since the original decision to refuse registration and now met the Standards.

4.3 Two cases related to character issues. Both individuals gave assurances to the appeal panel that they understood the impact on the profession and the original refusal decision was overturned.

4.4 One case concerned a refusal of registration on the basis that qualifications had been falsified in order to obtain employment. The appeal panel decided that this single act of dishonesty, which had occurred 24 years beforehand, was not sufficient to prevent registration.

4.5 The other four cases were remitted to the ETC. Three of these were from international applicants. All were rooted in concerns over whether the Standards of Proficiency were met.

4.6 Learning is routinely incorporated in training within both the Fitness to Practise and Registration Departments as well as, in relation to health and character declaration cases, in refresher training for the HCPC partners who sit on Registration Panels.

5. Operational challenges

- 5.1 There have in essence been two obstacles to the timely progression of registration appeal cases. First, the scheduling of hearings has presented significant challenges. Appellants who are based outside the UK but who wish to attend the appeal hearing often have very limited availability. On top of this hearings have by law to be chaired by a Council member, who – to avoid any conflict of interest - must not be a member of the ETC. The small number of Council members able to perform this function combined with their availability therefore further narrows the scheduling options.
- 5.2 This latter issue is being addressed through the secondary legislation, made under section 60 of the Health Act 1999, whose primary purpose is to bring public health specialists within the HCPC's regulatory ambit. The passage of this legislation will also enable Registration Appeal hearings to be chaired by HCPC partners rather than limiting that role to Council members. As the Council will be aware, the legislation did not complete the parliamentary process before the pre-election prorogation and how soon it will be possible to reintroduce it in the new Parliament is as yet unclear. Implementation of the change should make a considerable difference to the timeliness of appeal hearings.
- 5.3 The second barrier to timely progression relates to the complexity of some appeal cases and a lack of expertise in the Fitness to Practise Department to grapple with this complexity. With the exception of those arising from refusals on health and character grounds – only 30% of all appeals received in the three year period under review, most appeals derive from issues in which the relevant expertise resides within the Registration Department – ie EEA (46%) and international (22%). In consequence Case Managers in the Fitness to Practise Department, who manage the Registration Appeals workstream alongside three other case types, struggle to maintain a firm grip on this area of the work. This is manifested in several ways – including a lack of a full understanding of the issues in contention or full appreciation of what information would assist the appeal panel to reach its decision and how it might sometimes be possible to resolve issues without the need for a formal appeal hearing. We propose to address this through moving the management of these cases to the Registration Department and the remainder of this paper outlines how we see this working in practice and the timescale for making the change.

Alan Shillabeer
Investigations Manager

The Future of Registration Appeals

1. Management of registration appeals

- 1.1. Article 37 of the Health and Social Work Professions Order 2001 makes provision for individuals to appeal against registration-related decisions made on behalf of the Education and Training Committee to the Council. This process is internally referred to as “Registration Appeals.”
- 1.2. Appeals against registration-related decisions are currently managed by the Fitness to Practise Department. It is the intention of the Executive to transfer the day-to-day management to the Registration Department.

2. Rationale

- 2.1. The Registration Department now has the skillset to be able to manage the scheduling, hearing and management of registration appeal cases.
- 2.2. Since HCPC’s inception in 2002, the registration appeal process has been managed by the Fitness to Practise Department. At the time the registration appeal process was seen as a “legalistic” procedure similar to the management of fitness to practise cases. Placing registration appeals within the Fitness to Practise Department allowed them to focus on their core competences around panel scheduling, hearing management and case management leaving the Registration Department to focus on their core competences around registration application assessments.
- 2.3. Over the years, the core competencies of the Registration Department have changed. Since the implementation of CPD profile audits in 2008, the Registration Department has built up its skillset in the scheduling and management of CPD assessment days. CPD assessment days involve the scheduling of up to eight CPD assessors to visit HCPC office to evaluate CPD profiles. The volume of CPD profiles changes depending on what professions are in a period of renewal. Similar to registration appeals, changing volumes means this the CPD assessment process has to expand and contract in capacity when demand dictates.
- 2.4. Similarly to CPD assessment days, the Registration Department have developed their skillset in the scheduling, management and delivery of test of competence assessments for international applicants and aptitude tests for those international applicants who believe they have EEA mutual recognition rights under Directive 2005/36/EC on the recognition of professional qualifications. Over the last 5 years we have seen an increase in test of competence cases from one in 2009 to twenty-two in 2014 and aptitude test requests increase from zero in 2009 to fourteen in 2014. Both a test of competence and an aptitude test normally involve a

pair of assessor visiting the HCPC offices along with the applicant and the assessors ascertaining whether the applicant meet the HCPC's application requirements for registration. This process is demand lead with lead times, volumes and complexity varying.

- 2.5. The expertise to handle the complexity of registration appeals resides within the Registration Department and this knowledge is becoming more and more relevant to the successful management of registration appeals. The Registration Department has built up considerable knowledge of how application legislation is implemented, particularly around international and EEA applications. As more and more speculative applicants believe they have EEA mutual recognition rights under Directive 2005/36/EC on the recognition of professional qualifications, the Registration Department has had to change and adapt working procedures and training to manage more technical components of these evolving European situations. The knowledge of information built up to make successful EEA application decisions is used in some degree in case conferences but it should be extended to assist in the successful management of registration appeals. It would not be proportionate to attempt to impart and then embed this technical registration application knowledge into the Fitness to Practise Department particularly since the operational implementation of EEA mutual recognition is constantly evolving and adapted to the changing circumstances of applicants.

3. Process review

- 3.1. Process development is at an early stage but three key themes have emerged and are being acted upon.
- 3.2. The importance of taking a bottom-up approach to the design of the Registration Appeal process. Utilising the business analyst expertise developed as part of the Registration System and Project review project, the Registration Department are starting afresh rather than unpicking and making minor modifications to the existing processes. Although this approach takes a little longer, it has ensured that the focus is on developing a full and complete issue-free process rather than simply focusing the majority of attention and effort on some of the current pinch-points and bottlenecks in the existing process. In practice, the process is taking a similar shape to the CPD profile, International and EEA application assessment and test management processes.
- 3.3. Greater emphasis has been placed on whether the issues raised in the appeal can addressed as part of a registration assessment decision and dealt with before being placed before a panel. Currently, the focus of the registration appeal has been similar to that of a fitness to practise case,

ensuring the panel hearing has been listed correctly, the advocate has been appropriately instructed, the panel is correctly constituted and that the panel have all relevant documents before them when they hear the appeal. The Registration Department is designing the process in an attempt to resolve issues before the panel hear the appeal or at least provide more detailed information to the panel to assist them to make a more well-informed decision.

- 3.4. There is a need to build a process that allows the Registration Department to learn from mistakes made in the registration application decision making process as well as the registration appeal process itself with an eye to identify whether these mistakes can be minimised or engineered out of the process.

4. Resourcing

- 4.1. Registration Department will create a new Registration Appeal sub-team within the Registration Operations team.
- 4.2. Four Registration Department team members will be responsible for registration Appeals, one Registration Appeal Manager and 3 Registration Appeal Coordinators. It is expected that two posts will be absorbed into the Registration Department's budget by not filling some current roles. Two posts will be funded by a transfer of the FTE budget allocation from the Fitness to Practise Department to the Registration Department.

5. Reporting

- 5.1. The reporting of registration appeals will transfer from the Fitness to Practise Management report to the Operations Management report and will be regularly reported to Council as part of the Registration section.

6. Timescale

- 6.1. The transfer of the registration appeal operation from Fitness to Practise Department to the Registration Department is at an early stage but the timescale will be driven by accuracy and quality not at the expense of chasing an arbitrary time deadline. Both members of the Fitness to Practise Department and the Registration Department are working hard to ensure a smooth transition of the registration appeal process not just to ensure that new appeals are treated with high quality and great accuracy but also that existing cases are micro-managed over the transitional phase. The timely delivery of the transfer is dependent on the delivery of several different work streams such as the recruitment of new roles, potential changes to existing employee's job descriptions, process

development and implementation into HCPC Quality Management System and changes to the existing case management and registration systems.

- 6.2. A more detailed delivery schedule will be provided at the next Council meeting as part of the regular Operations Management report.

Greg Ross-Sampson
Director of Operations